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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/330,963	06/11/1999	RICHARD EARL MCNUTT	ODS/6	1075

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EXAMINER

CHERUBIN, YVESTE GILBERTE

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 06/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/330,963

Applicant(s)

MCNUTT ET AL.

Examiner

Yveste G. Cherubin

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 12, 15-25, 27, 28 and 31-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 12, 15-25, 27, 28 and 31-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

MARK SAGER  
PRIMARY EXAMINER

**DETAILED ACTION**

1. This action is in response to the amendment of the Application No. 09/330,963 received on April 1, 2002. It has been noted that claims 33-58 are added. Thus claims 1-58 are pending.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-12, 15-25, 27-28, 31-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al. (US Patent 5,830,068) in view of Wendkos (US Patent No. 6,278,980).

As per claims 1, 7-9, 11-12, 15, 17, 23-25, 27-31, 33, 39-44, 46, 52-57, Brenner et al. discloses a system and method of use for interactive wagering, 1:6-8 comprising a data management facility (380) that stores data relating to wagering account information, 19:27-34. However, Brenner does not disclose the use of a plurality of types of user interface systems to receive account information. Wendkos teaches an interactive system wherein users can register and/or redeem award credits. Wendkos' system is configured to allow users to access account information using different types of user interfaces. In a telephone environment, the interactive platform is connected to a toll free telephone number where a participant or user's call is handled by a computer

Art Unit: 3713

controlled voice response unit. In a computer network environment, a computer user connects to the interactive platform over a network wherein the network can be any type of network, such as a local area network, a wide area network, a public telecommunications such as the Internet, an internal company network such as an Intranet, a CATV network, or a telephone network. In general, the interactive platform of Wendkos is arranged to interact with program participants or users to manage an awards program, or wagering program in our case. Wendkos' system comprises a plurality of databases wherein one of these databases includes information about participants in the program. Thus, Wendkos' invention is directed to an interactive program wherein a computer program contains instructions for receiving a communication from participants, retrieving information about participants from a database based on information contained in the communication, and controlling interaction with participants based on information about participants, retrieved from the database. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the plurality of communication interfaces as thought by Wendkos into the Brenner type system in order to facilitate the users' interaction with the program. Regarding claims 2-5, 18-19, 21, 32, 34-37, 47-50, Wendkos further teaches a system wherein the television is a cable system, 2:24-32, 12:22-28. As per claims 6, 16, 20, 22, 38, 45, 51, 58, one of ordinary skill in the art would have been motivated to include a satellite television system into the Brenner type system in order to speed up the transmission of data.

***Response to Arguments***

3. Applicant's arguments filed on April 1, 2002 with respect to claims 1-9, 11-12, 15-25, 27-28, 31-58 have been fully considered but they are not persuasive.

On pages 10-11, Applicant argue that nowhere in Wendkos is it disclosed or suggested to allow a user to access information from a single account with more than one type of user interfaces". Examiner notes that Applicant is arguing limitations that are not in the claims because the Applicants are not claiming "allowing a user to access information from a *single account* with more than one type of user interfaces". Besides Wendkos discloses an interactive system wherein applicant can use plurality of types of interface to interact with the system. See the abstract. Further, Applicant asserted that there is no suggestion in the Wendkos reference that the personal identification number includes both a network address and a telephone number. Again, the Applicant is arguing limitations that are not in the claims because nowhere in the claimed limitations does it read that " the personal identification number includes both a network and telephone address". The Specification is not the measure of invention. Therefore, limitations contained therein cannot be read into the claims for the purpose of avoiding the prior art. In re Sporck, 55 CCPA 743, 386 F .2d 924, 155 USPQ 687 (1968). The claims are so broad that the Examiner contends that Brenner and Wendkos meet the limitations as claimed. Applicant's response has not shown explicitly what it is to be the distinguishing element in the claim language in view of the cited references, therefore the rejection will be sustained. The added claims 33-58 are met by Brenner and Wendkos.

***Action Final***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
- a. US Patent No. 6,383,074 to Boggs, which teaches methods and apparatus for parimutuel gaming using speech recognition.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yveste G. Cherubin whose telephone number is (703) 306-3027. The examiner can normally be reached on 9:30 - 6:00.


Art Unit: 3713

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (703) 308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

June 4, 2002

ygc 

  
MARK SAGER  
PRIMARY EXAMINER